

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 16390 of A & M Investments, as amended, pursuant to 11 DCMR 3107.2, for a variance to allow proposed alteration and conversion of mixed-use commercial buildings to all commercial buildings, and a variance from Subsection 771.2 to allow construction that exceeds the maximum allowable floor area ratio for each structure for property located in a DCOD/C-2-B at premises 1425, 1427, 1429 21st Street and 2032 P Street, NW (Square 96, Lot 104).

HEARING DATE: November 18, 1998

DECISION DATE: November 18, 1998 (Bench)

ORDER

SUMMARY OF EVIDENCE:

1. The applicant submitted a new Surveyor's Plat at the public hearing to indicate that lots 77, 78, 79 and 100 of Square 96 were combined. The Office of the Surveyor recorded Lot 104, the new lot of record, on November 9, 1998. Accordingly, the application was amended to reflect the change.
2. The site is rectangularly shaped and contains 5,737.50 square feet of land area. The commercially zoned property has street frontages on 21st and P streets. A five-foot wide public alley abuts the site at the rear (south).
3. The property is developed with four, four-story row houses that were constructed at the turn of the century. The applicant's correspondence of July 22, 1998 to the Board states that all of the buildings are used for commercial rentals and have been used for that purpose for 25 years. The applicant's proposal is to continue using all of the buildings for commercial use.
4. The site is located in the Dupont Circle neighborhood of Ward 2 and in the Dupont Circle Historic District. The boundaries of the subject Square 96 are P Street to the north, O Street to the south, 21st Street to the west and 20th Street to the east. Hopkins Street bisects the square.
5. Dupont Circle is a mixed-use neighborhood that contains medium and high-density development. The neighborhood is located on the fringe of the Central Employment Area. As such, it contains retail, office and institutional uses that serve the residents of the neighborhood, as well as people throughout the city and region. The neighborhood's housing stock consists of large apartment buildings, row dwellings and single-family detached dwellings.

6. The site is zoned DCOD/C-2-B. The Zoning Regulations define the Dupont Circle Overlay District (DCOD) as an area of the city that is a unique resource, which must be preserved and enhanced. Strong protections are needed to retain the neighborhood's low scale, predominantly residential character, independent small retail businesses, human scale streetscape and historic character given the high-density development pressures caused by the proximity of the Central Employment Area and the Dupont Circle Metrorail Station.

The purposes of the Dupont Circle Overlay District are:

- To require a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk;
- To protect the integrity of "contributing buildings" in the historic district within the overlay district;
- To enhance the residential character of the area by maintaining existing residential uses and controlling the scale, location and density of commercial and residential development;
- To ensure compatibility of development with the Comprehensive Plan;
- To preserve areas planned as open gardens and backyards and to protect light, air, and the privacy that they provide;
- To enhance the streetscape by maintaining the public space in front of buildings as landscaped green spaces and limited curb cuts on Connecticut Avenue; and,
- To encourage greater use of public transportation and the free circulation of vehicles through public streets and alleys.

7. The C-2-B District permits matter-of-right, medium-density development, including office, retail, housing, and mixed uses to a maximum height of 65 feet, a maximum floor area ratio (FAR) of 3.5 for residential and 1.5 for other permitted uses, and a maximum lot occupancy of 80 percent for residential uses.

8. The Zoning Administrator's office, by correspondence dated June 10, 1998, indicated that zoning relief from the maximum allowable floor area ratio (FAR) for each of the four buildings is required as follows:

Address	COMMERCIAL FAR Allowed (1.5)	FAR Provided	Variance
1425 21 st Street	1,721 SF	3,350 SF (2.9 FAR)	1,629 SF
1427 21 st Street	1,721 SF	3,259 SF (2.8 FAR)	1,538 SF
1429 21 st Street	1,721 SF	857 SF (Rest/Bar) 2,452 SF (Office) 3,309 SF (Total) (2.88 FAR)	1,588 SF
2032 P Street	3,443 SF	3,439 SF (Retail/Rest) 3,375 SF (Offices) 6,814 SF (Total) (2.97 FAR)	3,372 SF

9. The total FAR permitted in the C-2-B District is 3.5, of which only 1.5 can be used for commercial purposes. The remaining 2.0 FAR must be used for residential development. Based on the applicant's proposal, all of the buildings would be used for commercial development and exceed the FAR requirement, as indicated above. The computations provided by the Zoning Administrator's office do not indicate that any of the four buildings exceed the total FAR permitted in the C-2-B District.

10. The applicant indicated that the practical difficulty is the property is very small and cannot be expanded to obtain maximum use. The expense of operating the buildings and the property taxes that must be paid to the District government is disproportionate to the amount of rental income. Stated differently, income does not support expenses.

11. The applicant submitted into the file three certificates of occupancy (Cs of O). C of O No. B00180156 was issued on March 2, 1998 to The Daily Market Development Corp for use of 2032 P Street, first floor, as a deli. C of O No. B114817 was issued on December 22, 1981 to Halifax Square Associates for the use of 1427 21st Street, first floor, for offices. C of O No. B121778 was issued to Partners For Livable Places (undated) for the use of 1429 21st Street for non-profit office use.

12. By written report dated November 12, 1998 and oral testimony at the hearing, Advisory Neighborhood Commission (ANC) 2B recommended denial of the application. The ANC requested and received a waiver to have their report submitted into the record on the day of the hearing. The ANC's reasons for recommending denial of the application were:

- The proposal to convert mixed-commercial use buildings to all commercial threatens the residential homes along 21st, 22nd, O and N streets, and Newport Place. There has been no change in the character of the neighborhood that would justify this type of change. In addition, commercial use in a residential neighborhood will decrease residential property values. It will also have a vehicular impact as employees and customers park in areas zoned as residential spaces.
- Café Japone, the tenant at 2032 P Street, has violated District of Columbia building codes by constructing and opening a nightclub in its basement, called Aki, with a separate entrance. There is no record of an issued construction permit filed with the city's Records Management Service. There is no record of a Fire Department/Fire Marshall report on file of proper egress for the property. (There is only one fire exit.) Passage of this variance will allow this tenant to build out their space into the neighboring townhouse; encroaching further on a residential area which is subject to Aki's loud music.
- The buildings in question are located within the Alcohol Beverage Control (ABC) Board's West Dupont Circle Moratorium Zone. The ANC and the ABC have worked diligently to control the number of restaurants, bars and clubs along P Street, NW. Approving this variance will set back the long hours put in by community leaders and organizations to keep a balance between residents and businesses.
- Café Japone has violated their current liquor license and complaints have been filed with the ABC.
- As longtime property owners in the neighborhood, A&M Investments had ample opportunity to discuss this matter with concerned community organizations. A&M Investments has not approached the ANC to discuss their plans with the community. This shows a disregard for the concerns of neighborhood residents.

13. The ANC submitted a petition signed by 48 neighborhood residents protesting the variance.

14. A copy of the ANC's letter protesting the liquor license of Café Japone was submitted into the record. The correspondence, dated November 12, 1998 asserts that the facility had violated the conditions stipulated in its application; and, in essence, it has had a negative impact on the Dupont Circle neighborhood.

15. The Dupont Circle Citizens Association submitted correspondence and presented oral testimony in opposition to the application. The community organization indicated that the mixed-use buildings front on residential streets, and, as such, are already intrusive to the well being of close-by residents. To increase the commercial square footage of the buildings would put undue hardship on the residents of the area. Further, the increase in commercial square footage would intrude into the residential area. The mixed-use category was intended to act as a buffer between commercial and residential areas. To allow these buildings to be used exclusively for commercial use would negate the buffer.

16. The Dupont Circle Citizens Association stated that no building permit had been issued for the addition of club Aki located at 2032 P Street, NW. There are no approvals from the Fire Department for egress from the club. The ABC records do not indicate that Café Japone applied for a substantial change in seating to accommodate the addition of club Aki. Over the years, the garbage from 2032 P Street, NW has caused a serious rodent problem for the buildings surrounding the property. Although some improvements have been made to the situation, a severe rodent problem still exists.

17. A representative of the Dupont Square Condominium Association (located adjacent to the property along 21st Street) presented testimony in opposition to the application.

FINDINGS OF FACT

1. The Board finds that the C-2-B zoning classification permits both commercial and residential uses. The density level is substantially less for buildings that are used exclusively for commercial uses than it is for those buildings that are used for mixed uses and residential development. The applicant is proposing to use all of the buildings' gross floor area for a commercial use. As such, the amount of commercial space would be twice the amount that is permitted as a matter-of-right.

2. The Board finds that the subject buildings are located on the fringe of the CBD in the Dupont Circle neighborhood. The site's C-2-B zoning is intended to accommodate commercial development at a density level that is significantly less than that which is located in other higher density commercial areas. Permitting the buildings to be used exclusively for commercial development would contribute to the erosion of the residential character of the Dupont Circle neighborhood.

3. The Board finds that the C-2-B zoning of the site is intended to serve as a buffer between the intense commercial development of downtown and the mixed-use and residential development of the Dupont Circle neighborhood. The buffer is important because it maintains a transition between the high-density development of the central employment area and the neighborhood's medium-density residential development.

4. The Board finds that the applicant's proposal does not support or complement the purposes of the Dupont Circle Overlay District.

5. The Board finds that the applicant did not provide certificates of occupancy to indicate that the city had previously approved the use of the buildings, in their entirety, for commercial use. The buildings are almost 100 years old and are therefore grandfathered into the Zoning Regulations. The applicant is not deprived of using any portion of the buildings' gross floor area. However, that development cannot exceed 1.5 for commercial uses.

6. The Board finds that the neighborhood's community organizations and residents are opposed to approving the application. The residents indicated that the commercial use of the buildings have spilled-over and are encroaching on the nearby residential streets; that there are

numerous building and fire code violations that exist at the site; and, the exclusive use of the buildings for commercial purposes would only exacerbate the negative noise, traffic and parking problems that already exist at the site.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking an area variance to allow the proposed alteration and conversion of mixed-use buildings to all commercial buildings and to allow construction that exceeds the maximum allowable floor area ratio for each of the four buildings.

Granting such variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. Further, the Board must find that the application will not be of substantial detriment to the public good and will not substantially impair the intent, purpose and integrity of the Zoning Regulations and Map.

The Board concludes that the applicant has not met the burden of proof pursuant to Subsections 771.2 and 3107.2. The requested zoning relief is excessive. The applicant is permitted to use up to 1.5 FAR for commercial development. The applicant's proposal would substantially exceed that amount; all of the buildings would be used for commercial purposes (approximately 3.0 FAR). If all of the buildings were used exclusively for commercial development, there would be a substantial increase in the commercial density level of the site. The applicant's proposal is contrary to the intent of the C-2-B District. The C-2-B District is designated to serve commercial and residential functions, with high-density residential mixed uses.

The Board considered the views of the residents and community organizations that the commercial use of the site would have negative impacts on the Dupont Circle neighborhood, and that approving this project would assist to erode the residential character of the area. The Board accorded ANC 2B the "great weight" to which it is entitled.

The Board concludes that a practical difficulty does not exist at the site; that this proposal would impair the intent, purpose and integrity of the Zoning Regulations and Map; and that it would cause adverse impacts on the Dupont Circle neighborhood. Accordingly, it is hereby **ORDERED** that the application be **DENIED**.

VOTE: 3-0-1 (Herbert M. Franklin, Betty King, Jerry H. Gilreath to deny; Sheila Cross Reid, abstaining.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: *Sheri M. Pruitt-Williams*
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: DEC 29 1998

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 16390

~~As Interim~~ Director of the Office of Zoning, I hereby certify and attest that on DEC 29 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class, postage prepaid, to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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ATTESTED BY: *Sheri M. Pruitt-Williams*
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: DEC 29 1998